

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1211 of 1996

in

SPECIAL CIVIL APPLICATION No 3134 of 1995

with

LETTERS PATENT APPEAL NO.1304 OF 1996

in

SPECIAL CIVIL APPLICATION NO. 3134 OF 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MAHENDRAKUMAR NATHALAL SHAH

Versus

CENTRAL AEXCISE & CUSTOMS DEPARTMENT

Appearance:

MR MB GANDHI for Appellant

MR JAYANT PATEL for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE A.L.DAVE

Date of decision: 25/10/1999

ORAL JUDGEMENT (Per Panchal, J.)

#. Both these appeals, which are instituted under Clause 15 of the Letters Patent, are directed against judgment dated August 21, 1996, rendered by the learned Single Judge in Special Civil Application No.3234 of 1995. As the appeals involve determination of common questions of facts as well as law, we propose to dispose them of by this common judgment.

#. The appellants in Letters Patent Appeal No.1211 of 1996 are owners of premises bearing Block No.4 situated in the building known as Stadium House, at Navrangpura, Ahmedabad. An area admeasuring 105.57 sq. metres was let out by the owners to Central Excise and Customs Department vide lease deed for a period of five years. The Directorate of Estates, Government of India, had issued an office memorandum dated September 1, 1982 specifying that the rent should be got reassessed from the Central Public Works Department ('CPWD' for short) on the expiry of period of five years from the date of original assessment and after every five years thereafter. The CPWD issued certificate dated December 17, 1994, assessing the rent of the premises let out to the Central Excise and Customs Department which was to be effective from September 9, 1993 to September 8, 1998. The grievance made by the original petitioners was that, though the CPWD had issued certificate dated December 17, 1994, the rent was not revised in terms of office memorandum dated September 1, 1982. Under the circumstances, the original petitioners filed Special Civil Application No.3134 of 1995 and prayed the Court to issue a writ of mandamus directing the respondents to implement the assessment made by the CPWD as indicated in its certificate dated December 17, 1994 and to make payment of rent at the rate mentioned in the said certificate. It was also prayed by the original respondents to direct the respondents to clear the accounts for the period prior to September 9, 1993 and to make payment of all the difference amount which accrued to them owing to less payment by the original respondents,

#. An affidavit in reply was filed on behalf of the respondents controverting the averments made in the petition. It was, inter alia, pleaded that in view of the provisions of Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the High Court

had no jurisdiction to entertain the petition filed under Article 226 of the Constitution and, therefore, the same should be dismissed. What was stressed therein was that since the lease was not renewed after the expiry of the initial period of lease, the petitioners were not entitled to claim reliefs prayed for in the petition. It was also submitted that as alternative efficacious remedy was available to the petitioners under the Bombay Rent Act, the petition should not be entertained.

#. After hearing the parties, the learned Single Judge observed that as effective order was passed in Special Civil Application No.2602 of 1993, the petition had become infructuous and deserved to be disposed of accordingly. Therefore, the learned Single Judge by judgment dated August 21, 1996 discharged the Rule with no orders as to costs, giving rise to Letters Patent Appeal No.1304 of 1996 by the department. The original petitioners have filed Letters Patent Appeal No.1211 of 1996 challenging that part of the order of the learned Single Judge by which interest is denied to them on the arrears of rent directed to be paid to them.

#. We have heard the learned counsel for the parties. The submission that the High Court had no jurisdiction to entertain the petition under Article 226 of the Constitution in view of the provisions of Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, cannot be accepted. Article 226 not being one of those provisions of the Constitution which may be changed by ordinary legislation, the powers under Article 226 cannot be taken away or curtailed by any legislation short of amendment of the Constitution. It is well settled the even where a statutory provision bars the jurisdiction of Courts, generally, it will not bar the jurisdiction of the High Court under Article 226. Having regard to the facts of the case, it cannot be said that there was inherent lack of jurisdiction in entertaining petition filed by the petitioner under Article 226 of the Constitution and, therefore, the plea that the impugned judgment should be set aside as the High Court had no jurisdiction to entertain the petition under Article 226 will have to be rejected and is hereby rejected.

#. The plea that in view of the alternative remedy available under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the petition should not have been entertained and the petitioner should have been relegated to the alternative remedy available to him under the said Act also cannot be

accepted at this stage. It may be stated that another owner of the premises had filed Special Civil Application No.6435 of 1991 claiming similar such relief and therein notice was ordered to be issued to the respondents, i.e. the department, at the admission stage. The department had filed reply contesting the petition, inter alia, on the ground that alternative remedy was available under the Rent Act and, therefore, the petition should not be entertained. However, after hearing the learned counsel for the parties at length, the learned Single Judge had thought it fit to issue Rule and had entertained the petition. Thereafter, Special Civil Application No.3134 of 1995, out of which Letters Patent Appeal No.1304 of 1996 arises, was placed for admission hearing and as petition involving similar question was admitted earlier, this petition was also admitted and Rule was issued therein. It is well settled that once the petition is admitted, it should not be rejected on the ground that alternative remedy is available to the petitioner (see *Hirday Narain v. Income Tax Officer, Bareilly*, AIR 1971 SC 33, paragraph 12). The petition filed by the original petitioner was not only entertained by the learned Single Judge, but was heard on merits of the case. Moreover, with reference to Special Civil Application No.2398 of 1993, the Enforcement Directorate had addressed a letter dated March 19, 1996 to the Additional Central Government Standing Counsel and requested him to bring to the notice of the Court instructions contained in the said letter. By the said letter, the department had shown its readiness and willingness to pay rent based on recognized principle of valuation as per the Government's usual practice in this regard, i.e. Rs.6600/- per month with effect from June 13, 1987 and Rs.12,440/- per month with effect from June 13, 1992 and had left the matter specifically to the decision of the High Court. When the department had agreed to pay revised rent on the basis of recognized principle of valuation from June 13, 1987 and subsequently from June 13, 1992, it would have been unreasonable to relegate the original petitioner to alternative remedy available to him under the Rent Act for the purpose of revision of rent from September 1, 1982 to August 31, 1987. Having regard to all these circumstances, we are of the opinion that no error was committed by the learned Single Judge in entertaining the petition on merits, though alternative remedy available under the Rent Act was raised.

#. The contention that learned single Judge was not justified in determining the rent for the relevant period on the basis of average of two figures mentioned in the certificate dated December 17, 1994 and, therefore, the

impugned judgment should be set aside has no merits. It may be mentioned that in Special Civil Application No.2398 of 1993, the Enforcement Directorate had addressed a letter dated March 19, 1996 to the learned Additional Central Government Standing Counsel, instructing him to bring to the notice of the High Court the decision of the department and obtain appropriate orders. In the said letter, it was specifically mentioned that the department was agreeable to pay rent based on recognized principle of valuation, i.e. Rs.6600/- per month with effect from June 13, 1987 and Rs.12,440/- with effect from June 13, 1992. The determination was specifically left to the High Court by the said letter. In view of the consent given by the department, it cannot be said that the learned Single Judge has committed any error in determining rent of the premises. The criteria adopted by the learned Single Judge, namely to determine the rent on the basis of average of two figures mentioned in the certificate, cannot be said to be in any manner illegal or arbitrary so as to warrant interference of this Court in the present appeal. The determination being just and proper is hereby upheld.

#. Thus, we do not find any substance in any of the contentions urged on behalf of the appellants in Letters Patent Appeal No.1304 of 1996 and the same is liable to be dismissed.

#. So far as appeal filed by the owner of the property claiming interest on arrears of rent is concerned, we find that the learned Single Judge has exercised discretion of not granting interest to the owner of the property for arrears of rent. The exercise of the discretion cannot be said to be unreasonable or arbitrary so as to warrant interference by this Court in the appeal. In fact, the department could not pay the revised amount of rent because of non-availability of certificate from CPWD for which the department cannot be penalized. Having regard to the fair stand which was taken by the department, as is reflected in its letter dated March 19, 1996, we are of the opinion that the learned Single Judge was justified in not entertaining the prayer made by the owner of the property to direct the respondents to pay arrears of rent with interest. On overall view of the matter, we do not think that any error is committed by the learned Single Judge in not awarding interest to the owner of the property so far as arrears of rent are concerned. Under the circumstances, Letters Patent Appeal No.1204 of 1996 filed by the owner of the property claiming interest is also liable to be

dismissed.

##. It is relevant to notice that the original petitioners had claimed identical reliefs in Special Civil Application No.2602 of 1993 and, therefore, in our view, the learned Single Judge was justified in disposing of Special Civil Application No.3134 of 1995 as having become infructuous.

#. For the foregoing reasons, both the appeals fail and are dismissed with no orders as to costs.

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